

Applicants respectfully disagree and traverse the restriction requirement because the Examiner has failed to establish a valid reason for requiring restriction under 35 USC 121. Under the statute, restriction is appropriate only when the claims are directed to independent and distinct inventions. The Examiner has failed to show that the claims of Groups (I and III) and groups (II and IV) are independent. Clearly, they are not independent because the method of Groups (I and III) can be used to make the product of Groups (II and IV, respectively).


Furthermore, the Examiner has failed to adequately show that the inventions are distinct. In an effort to prove that the inventions are distinct as between Groups (I and III) and (II and IV), the Examiner states that the product of Groups II and IV could be made from a process that is materially different than that of Groups I and III. The example given is that the methods of groups I and III do not produce new devices but rather they produce prior art device with a higher yield, and that it follows therefore, that the product as claimed can be made by another and materially different process (i.e., a prior art process). Applicants respectfully disagree with the Examiner's support. The product made by the process of groups (I and III) would not be identically the same as that produced by the prior art process.

With respect to the inventions of Groups I and III, the Examiner states the inventions are related as combination and subcombination. Applicant's traverse this restriction requirement for at least the following reason. If the inventions of Groups I and III are patentably distinct inventions, then under MPEP § 803, there are two criteria for a proper requirement for restriction. The criteria are: (A) The inventions must be independent or distinct as claimed; and (B) There must be a serious burden on the examiner if restriction is required. Furthermore, "a serious burden on the examiner may be *prima facie* shown if the examiner shows by appropriate explanation of separate classification, ... , as defined in MPEP § 808.02." In the present action, the Examiner states that the claims of Groups I and III are classified in class 216, subclass 095. Accordingly, the Examiner has not made a *prima facie* showing that there is a serious burden on the examiner if restriction is required, since the inventions of Groups I and III are classified in the same class and subclass.

Despite Applicants' disagreement with the Examiner's basis for restriction, and in an effort to hasten issuance of the present application, Applicants herein provisionally elect to prosecute claims 1-14 (Group I) and claims 16-24 (Group III) and withdraw claims 15 and 25 (Groups II and IV) subject to review of this restriction by the Examiner in view of Applicants' remarks herein. Should the Examiner find the remarks non-persuasive with respect to overcoming the restriction between Groups I and III, Applicants further provisionally elect to prosecute claims 1-14 (Group I) for examination on the merits. The Examiner's reconsideration is respectfully requested.

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